

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-853

January 30, 2002

MORGAN STANLEY CAPITAL GROUP, INC.
Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license Morgan Stanley Capital Group, Inc. to operate as a competitive electricity provider to provide standard offer service in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On December 11, 2001, Morgan Stanley Capital Group, Inc. (MSCG) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305. On January 15, 2002, MSCG filed additional information to supplement its earlier filing.

A. Type of Service Proposed

MSCG's application states that the proposed licensee plans "to supply non-residential [Standard Offer Service] service only, and that "MSCG intends to bid on both the Central Maine Power and Bangor Hydro SOS RFP solicitations."

B. Fee Paid

With its application, MSCG paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

MSCG proposes to operate only as a provider of Standard Offer Service in Maine. Pursuant to section 2(B)(1)(c) of Chapter 305, MSCG does not have to furnish a security instrument to the Commission, but must comply with standard offer security requirements established by the Commission.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

MSCG, as a competitive electricity provider in Maine, must demonstrate it has the technical ability to enter into necessary interconnection arrangements or contracts with Maine utilities, pursuant to section 2(B)(2)(a) of Chapter 305. In its application, MSCG provided information demonstrating its ability to enter into such arrangements or contracts.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. MSCG filed information to demonstrate its technical capability to meet that requirement within the NEPOOL/ISO-NE portion of the Northeast Power Coordinating Council control area. We have reviewed that information and find that it complies with the requirements of Chapter 305. MSCG also documented that it will meet the NEPOOL transaction provisions required by section 2(B)(2)(b)(ii) of Chapter 305.

B. Resource Portfolio

Pursuant to section 2(B)(4) of Chapter 305, MSCG, as a competitive electricity provider in Maine, must demonstrate its ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules. MSCG filed information to demonstrate its ability to meet these requirements. We have reviewed that information and find that it complies with the requirements of Chapter 305.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, MSCG provided information required by Chapter 305, section 2(B)(3), related to enforcement proceedings and consumer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

MSCG proposes to operate only as a provider of Standard Offer Service in Maine. Pursuant to section 2(B)(6) of Chapter 305, MSCG is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305, section 4(I) states that “[t]he Commission will maintain or cause to be maintained a ‘Do-Not-Call’ list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers.” We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, MSCG shall comply with the following requirements.

MSCG must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ MSCG must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business consumers. MSCG shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1). MSCG shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. MSCG shall provide a copy of that list to the Commission upon request.

Further, each month, MSCG must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ MSCG shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1).

D. Other Consumer Protections

Competitive electricity providers must provide certain protections to consumers. As a condition of licensing, MSCG:

1. shall obtain a consumer’s authorization before serving the consumer;
2. may not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

3. must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10;
4. may not collect or seek to collect unreasonable costs from a customer who is in default;
5. must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
6. may not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
7. must provide at least once annually to a customer any information disclosures required by the Commission by rule; and
8. must comply with any other applicable standards or requirements established by the Commission by rule.

35-A M.R.S.A. § 3203(4-A).

VI. ADDITIONAL PROVISIONS

MSCG must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. MSCG must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license Morgan Stanley Capital Group, Inc. to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules; under this license, Morgan Stanley Capital Group, Inc. may not provide any service except for Standard Offer Service in the service territories of Bangor Hydro-Electric Company and Central Maine Power Company in Maine;
2. order Morgan Stanley Capital Group, Inc. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers;

3. order Morgan Stanley Capital Group, Inc. to observe all other consumer protection requirements contained in Part V(D) of this Order; and
4. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 30th day of January, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.